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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* WILLIAM GIBBENS REDMANN and CHRIS OUTWATER

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Appeal 2015-002453  
Application 12/957,348  
Technology Center 3600

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Before HUBERT C. LORIN, BIBHU R. MOHANTY, and  
BRADLEY B. BAYAT, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM and enter a NEW GROUND OF REJECTION.

### THE INVENTION

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method form managing parking, the method comprising:
  - (a) reading, with an electric vehicle charging control device of a parking lot, the electric vehicle control device having a first reader to read an admittance identification presented by a user, the admittance identification associated with a parking lot entry event in a storage device; and,
  - (b) storing automatically, with the electric vehicle charging control device, a parking lot charging event in association with the admittance identification on the storage device to which the electric vehicle charging control device has access.

### THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Handler	US 2011/0035261 A1	Feb. 10, 2011
Smith	US 2011/0068739 A1	Mar. 24, 2011

The following rejections are before us for review:

1. Claims 1–20 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.
2. Claims 6, 10, 11, 13, and 14 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that the Appellants regard as the invention.
3. Claims 1–20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Handler and Smith.

## ISSUES

Did the Examiner err in rejecting claims 1–20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter; claims 6, 10, 11, 13, and 14 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that the Appellants regard as the invention; claims 1–20 under 35 U.S.C. § 103(a) as being unpatentable over Handler and Smith?

## ANALYSIS

*The rejection of claims 1–20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter.*

The Appellants’ challenge to the rejection fails to show error in the rejection.

The Examiner analyzed the claims in accordance with the two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101 as articulated in *Alice Corp. Pty. Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014). Ans. 2.

In accordance therewith, the Examiner found that (1) the claims are “directed to the abstract idea of gathering electric vehicle admittance and charging data and storing it” (Ans. 2) and (2) the additional elements in the claims amount “to no more than: (i) mere instructions to implement the idea on a computer, and/or (ii) recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry.” (*Id.*). From this, the Examiner determined that the claimed subject matter runs afoul of 35 USC § 101.

The Appellants argue that the claims recite various “physical, non-abstract element[s]” (Reply Br. 2–7). For example, the Appellants contend that claim 1 requires “specific . . . physical artifacts” including “‘an admittance identification’, ‘a first reader’, ‘a storage device’, ‘a parking lot’, and ‘an electric vehicle charging control device’” (*id.* at 3). According to the Appellants, “[t]he recited physical artifacts limit the invention as claimed to a particular physical embodiment that is non-generic” (*id.*). The Appellants conclude that the claims “are demonstrated to be more than an abstract idea” and “provide meaningful limitations which, in each case, renders the claimed invention patent eligible” (*id.* at 7).

We disagree. Although method claim 1 on its face is directed to the “process” category of patent-eligible subject matter in Section 101, we conclude that claim 1 is nonetheless nonstatutory because it is directed to judicially-excepted ineligible subject matter.

Claim 1 recites two steps; (a) reading; and (b) storing. Both steps involve information. A first type of information is read and a second type of information is stored in association with the first. This is the essence of information gathering. Claim 1 as a whole is directed to that: the concept of information gathering. Information gathering is a fundamental building block of research, not to mention fundamental to human behavior for, among many goals, to attain knowledge. We naturally constantly take in information and associate it with other information. The abstract idea category of judicially-excepted subject matter broadly covers building blocks of human ingenuity, like fundamental economic practices (*see Alice*). Information gathering is such a building block and thus properly categorized

as an abstract idea. Thus, we agree with the Examiner that claim 1 is directed to an abstract idea.

We find the Examiner properly and reasonably found that claim 1 is directed to “gathering electric vehicle admittance and charging data and storing it” (Ans. 2) and that that is an abstract idea. We have described it as “information gathering” (see above) but that is simply a higher level of abstraction than the Examiner’s articulation of it. *Cf. Apple, Inc. v. Ameranth, Inc.*, 2016 WL 6958650, \*7 (Fed. Cir. 2016) (“An abstract idea can generally be described at different levels of abstraction. As the Board has done, the claimed abstract idea could be described as generating menus on a computer, or generating a second menu from a first menu and sending the second menu to another location. It could be described in other ways, including, as indicated in the specification, taking orders from restaurant customers on a computer.”).

Under the first step of the *Alice* framework, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355. However it is described, we do not see that the Appellants have adequately shown that claim 1 is not directed to an abstract idea. That the claims include non-abstract “physical artifacts” is an insufficient reason to persuasively argue that claim 1 is not directed to an abstract idea. *See Alice*, 134 S. Ct. at 2358 (“The fact that a computer ‘necessarily exist[s] in the physical, rather than purely conceptual, realm’ . . . is beside the point.”). We note that the Appellants have put forward no rebuttal evidence showing claim 1 is *not* directed to an abstract idea irrespective of the level of abstraction at which it may be described

(e.g., “gathering electric vehicle admittance and charging data and storing it” or “information gathering”).

The second step of the *Alice* framework is “a search for an ‘inventive concept’—i.e., an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 134 S. Ct. at 2355 (alteration in original) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294 (2012)). We have considered the elements of claim 1 both individually and as an ordered combination, in light of the Appellants’ discussion, to determine whether the additional elements transform the nature of the claim into a patent-eligible application. We are unpersuaded that the Examiner erred in finding that they do not. *See e.g.*, Ans. 2.

The Appellants argue that claim 1 requires “‘an admittance identification’, ‘a first reader’, ‘a storage device’, ‘a parking lot’, and ‘an electric vehicle charging control device’” and that “[t]he recited physical artifacts limit the invention as claimed to a particular physical embodiment that is non-generic.” (Reply Br. 3).

We disagree.

Claim 1 recites four elements: “an electric vehicle charging control device,” “a first reader,” “admittance identification,” and “a storage device.” The Specification supports the view that said elements encompass that which is generic and common in the field at the time of the invention. *See* Spec., para. 128 (“processor of an electric vehicle charging control device . . . can include, but is not limited to a computer . . . or any device capable of executing instructions and/or sending and receiving control signals.”); para.

24 (“a barcode reader”); para. 23 (“a parking ticket”); para. 125 (“database can include . . . any device capable of storing information”); *see also*, Spec., para. 6 (“Large parking structures and parking lots frequently use automated gates with parking ticket dispensers at the entrance(s), and various mechanisms for managing exits. In modern system, these tickets are machine-readable”). The evidence on record supports the view that only conventional elements of a parking lot and generic computer system are involved. There is insufficient evidence that claim 1 roots the solution in computer technology. The Appellants’ arguments at pages 2–7 of the Reply Brief do not address the issue of whether the claims are directed to solving a technological problem. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) (“the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.”); *see also Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300–01 (Fed. Cir. 2016) (“the claim’s enhancing limitation necessarily requires that these generic components operate in an unconventional manner to achieve an improvement in computer functionality. The enhancing limitation depends not only on the invention’s distributed architecture, but also depends upon the network devices and gatherers—even though these may be generic—working together in a distributed manner.”). In our view, the claims are not directed to overcoming a technological problem. Rather, conventional elements of a generic electric vehicle charging control device, reader, and storage device are employed for their inherent functions to perform as expected; that is,



charging a vehicle, reading information, and storing information, respectively.

The Appellants contend that the claimed “events are described in the specification as being generated in response to particular real-world, physical events” (Reply Br. 3) (citing paragraph 81 and Figure 6b of Appellants’ Specification). We agree that the information being processed, as claimed, is particular (e.g., parking lot entry event, parking lot charging event), and the particularity gives a contextual and practical application for gathering information. However, this is insufficient to transform the abstract idea of gathering information into an inventive concept to ensure that in practice the method amounts to significantly more than the abstract idea itself. *Cf. CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir. 2011) (“The Court [in *Parker v. Flook*, 437 U.S. 584 (1978)] rejected the notion that the recitation of a practical application for the calculation could alone make the invention patentable.”). *Cf. Wireless Media Innovations, LLC v. Maher Terminals, LLC*, 100 F. Supp. 3d 405, 416 (D.N.J. 2015), *aff’d*, 636 F. App’x 1014 (Fed. Cir. 2016) (“Adding routine steps of recording, identifying, and communicating the ID code of a particular container, or moving the container from the receiving area to a vehicle does not transform an otherwise abstract idea into patent-eligible subject matter.”). We also note the Appellants’ arguments regarding independent claims 15 and 20, which are directed to a “system” and a “computer program product,” respectively (*see* Reply Br. 5–6). Like claim 1, claims 15 and 20 are ostensibly directed to statutory categories; namely a “machine” and a “manufacture,” respectively. Nevertheless, we conclude

that claims 15 and 20 are similarly nonstatutory because they are directed to the judicial exception of abstract ideas. Appellants' arguments regarding the dependent claims are unpersuasive for similar reasons. For example, although we agree with the Appellants that "an entry gate of the parking lot" in claim 3 is a "physical entity" (Reply Br. 3), that is not relevant to the question of whether claim 3 is directed to solving a technological problem for the reasons set forth above. We see nothing in the subject matter claimed that transforms the abstract idea of information gathering into an inventive concept. "[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea 'while adding the words 'apply it'' is not enough for patent eligibility." *Alice*, 134 S. Ct. at 2358. For the foregoing reasons, albeit the words "apply it" are not expressly recited in the claims, that is in effect what the claimed subject matter would entail in practice.

We have fully considered the Appellants' arguments. For the foregoing reasons, they are unpersuasive as to error in the rejection. The rejection is sustained.

*The rejection of claims 6, 10, 11, 13, and 14 under 35 U.S.C. § 112, second paragraph, as being indefinite or failing to particularly point out and distinctly claim the subject matter that the Appellants regard as the invention.*

The Appellants have not contested the rejection under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which Appellants regard as the invention (App. Br. 6; Reply Br. 2). Thus, we summarily sustain the rejection.

*The rejection of claims 1–20 under 35 U.S.C. § 103(a) as being unpatentable over Handler and Smith.*

The Examiner finds the claim 1 limitation of “(a) reading” in Smith at paragraphs 2, 15–18, and 20, and finds the limitation of “(b) storing” in Handler at paragraphs 17–19 and 42–44 (Final Act. 4; Ans. 2–4). The Examiner determines that it would have been obvious to combine the teachings of Smith and Handler (Final Act. 5).

The Appellants argue that Smith does not disclose “reading, with an electric vehicle charging control device of a parking lot, the electric vehicle control device having a first reader to read an admittance identification presented by a user, the admittance identification associated with a parking lot entry event in a storage device” as required by claim 1 (*see* Appeal Br. 13; *see also* Reply Br. 7–9). The Appellants contend that “Smith is completely silent as to ‘Admittance Identification’” (Appeal Br. 13). The Appellants assert that the term “admittance identification” is defined at paragraph 23 of the Appellants’ Specification (Reply Br. 8, 14). According to the Appellants, “[t]he location of automated ticket dispenser 123 is shown in FIG. 1 as being adjacent to parking lot entrance 120, absent in Smith” (*id.*).

[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification.

*In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Paragraph 23 of the Appellants’ Specification is reproduced below with our emphasis added:

Herein, the term “admittance identification” or “admittance ID” refers to either a parking ticket issued by ticket dispenser 123 or an identification recognized by the automated ticket dispenser 123 *or other device similarly located and able to read the identification.*

We agree with the Appellants that the proper construction of “admittance identification” is governed by the definition at paragraph 23 of the Specification. However, this definition expressly includes devices other than ticket dispenser 123, and we therefore decline Appellants’ invitation to incorporate ticket dispenser 123 — or the exact arrangement shown in Figure 1 — into the claim. “The problem is to interpret claims ‘in view of the specification’ without unnecessarily importing limitations from the specification into the claims.” *E-Pass Techs., Inc. v. 3Com Corp.*, the pr, 1369 (Fed. Cir. 2003).

Turning to the rejection, we find that Smith discloses the “admittance identification” of claim 1. Smith discloses at paragraph 8 that “parking space monitor 12 is positioned adjacent each parking space,” and at paragraph 17 discloses that parking space monitor 12 is able to recognize an authentication code using barcode scanner 20. We therefore find, consistent with the definition in the Specification, that parking space monitor 12 with barcode scanner 20 is an “other device similarly located and able to read the identification” and that the authentication code in Smith is an “identification recognized by” the parking space monitor 12. Spec., para 23; *see also id.* at para. 24 (“presented identification and reader may be, for example and not by way of limitation, a barcode and a barcode reader”).

We note the Appellants' argument that "Smith teaches the authorization code as provided in exchange for pre-payment" (Reply Br. 7).

We take this argument as directed to the claim 1 limitation of "admittance identification presented by a user." This argument is not commensurate with the scope of the claim; nothing in claim 1 excludes pre-payment for the "admittance identification." We further note that the Appellants' Specification at paragraph 65 describes, by way of example, presentation of a pre-issued admittance identification ("the patron . . . presents a pre-issued identification to an identification sensor").

The Appellants argue that "Smith provides no indication of the authorization code being associated with a parking lot entrance event in the database" and "Smith makes no mention of database activity as a result of the code being entered." (Reply Br. 8). The Appellants also argue that "Smith has made no detection of vehicle entry into the parking lot" (*id.*).

We disagree and find that Smith discloses "the admittance identification associated with a parking lot entry event in a storage device" as required by claim 1. Smith discloses that parking space monitors 12 are in two-way communication with computer system 30 through a network such as a LAN or the internet (Smith, para. 13). Smith at paragraph 17 discloses that when a user pulls into a parking space, "vehicle detector 14 senses the presence of the vehicle and sends a signal to the computer system 30, which in turn begins an alarm sequence" and in order to disable the alarm, "an authorization code must be entered within a short time period," such as "by having the code scanned by barcode scanner 20." Smith at paragraph 11 discloses that "code entry device 20, 22 enables a parker to

enter the authorization code which in turn is communicated to the computer system.” One of ordinary skill reviewing this disclosure would be led to store the received authorization code in association with the corresponding vehicle detection, e.g., in a database of computer system 30. *See* Smith, para. 22 (“computer system 30 is essentially conventional . . . systems comprising databases . . . are known” and “may be readily adapted for use in carrying out the functions described above by a person of ordinary skill in the art”).

For the reasons set forth above, we agree with the Examiner that Smith’s disclosure of reading an authorization code using barcode scanner 20 of parking space monitor 12 meets the claimed “reading” (*see* Ans. 4).

Claim 1 also requires “(b) storing automatically, with the electric vehicle charging control device, a parking lot charging event in association with the admittance identification on the storage device to which the electric vehicle charging control device has access.” We find that Smith would lead one of ordinary skill to the above limitation of claim 1. Because we find that Smith alone would lead one of ordinary skill in the art to what is claimed, we find it unnecessary to address the Appellants’ arguments regarding Handler.

Smith discloses at paragraph 20 that “[t]he parking space monitors 12 may also include a power supply 42 for permitting a parker to recharge the batteries of an electric vehicle” and “power supply 42 can be energized and controlled by the computer system 30 so that no power is provided unless an acceptable authorization code has been entered.” Paragraph 20 further discloses that “any electricity used may be charged to the customer’s

account at the time the reservation is made and/or paid for.” One of ordinary skill reviewing this disclosure would be led to communicate the information about electricity provided by power supply 42 (e.g., “in kilowatt hours or simply dollars”) from parking space monitor 12 to computer system 30 and to associate the electricity usage information with the customer’s provided authorization code, e.g., in the database of computer system 30 as discussed above. “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416, 127 S. Ct. 1727, 1739, (2007).

For the reasons set forth above, we will affirm the rejection of claim 1. Our reasons in support of the prima facie case of obviousness differ from that of the Examiner and, accordingly, we denominate our affirmance as a new ground of rejection.

Independent system claim 15 and computer program product claim 20 are directed to similar functionality as claim 1 (i.e., reading and storing) and the rejection of claims 15 and 20 is affirmed under the same analysis set forth above.

Having affirmed the rejection of claims 1–20 as directed to judicially-excepted subject matter, we do not reach the question of whether the Examiner’s rejection of dependent claims 2–14 and 16–19 under 35 U.S.C. § 103(a) as being unpatentable over Handler and Smith is in error. *Cf. Ex Parte Gutta*, 93 USPQ2d 1025 (BPAI 2009) (precedential) (declining to reach alternate grounds of rejection when affirming a rejection under 35 U.S.C. § 101).

### CONCLUSIONS

The rejection of claims 1–20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter is sustained.

The rejection of claims 6, 10, 11, 13, and 14 under 35 U.S.C. § 112, second paragraph, as being indefinite or failing to particularly point out and distinctly claim the subject matter that the Appellants regard as the invention is summarily sustained.

The rejection of claims 1, 15, and 20 under 35 U.S.C. § 103(a) is sustained, but denominated as a new ground of rejection.

We do not reach the rejection of claims 2–14 and 16–19 under 35 U.S.C. § 103(a) as being unpatentable over Handler and Smith.

### DECISION

The decision of the Examiner to reject claims 1–20 is affirmed.

### NEW GROUND

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” 37 C.F.R. § 41.50(b) also provides that the Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

- (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the



examiner, in which event the proceeding will be remanded to the examiner . . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record . . . .

Should the Appellants elect to prosecute further before the Examiner pursuant to 37 C.F.R. § 41.50(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before the Examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If Appellants elect prosecution before the Examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Patent Trial and Appeal Board for final action on the affirmed rejection, including any timely request for rehearing thereof.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED; 37 C.F.R. § 41.50(b)